In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:	)	
	)	Chapter 7 Case
ROBERT CLAYTON SHARPE	)	
ELIZABETH LUCILLE SHARPE	)	Number 99-21481
a/k/a Elizabeth C. Sharpe	)	
	)	
Debtors	)	

ORDER ON DEBTORS' MOTION TO DISMISS

Debtors' case was filed on December 1, 1999. Debtors had intended to reaffirm a debt, which they believed was secured by their 1996 pickup truck, to First National Bank in order to keep the truck and due to the fact that an uncle of one of the Debtors had co-signed their note in favor of the bank and pledged his own personal asset, a certificate of deposit, to further secure that indebtedness. At the creditors' meeting it was discovered that a creditor, The First National Bank of Baxley, had failed to perfect its security interest in the truck. As a result, the Trustee anticipates selling the vehicle free and clear of any lien asserted by the bank, and using the proceeds to pay creditors in the case. The Debtors now realize that the sale by the Trustee of the vehicle, with proceeds distributed to creditors, will result in the uncle's loss of his certificate of deposit and in their loss of the vehicle. They also feel morally obligated, based on familial ties,

to repay the uncle even though their debt to the uncle will be discharged. To avoid this result they filed a Motion to Dismiss their case on January 7, 2000. 11 U.S.C. § 707(a) provides:

> (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including–
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> (1) unreasonable delay by the debtor that is prejudicial to creditors;
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> (2) nonpayment of any fees and charges required under chapter 123 of title 28; and
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> (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing with such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

Had the bank perfected its security interest the Debtors would have paid for the truck via reaffirmation, would have the benefit of reliable transportation, and would have protected the uncle. Because of the bank's failure to perfect its security interest the Debtors now face the prospect of both losing their vehicle, and paying the indebtedness on which the bank has recourse against the uncle.

The Chapter 7 Trustee filed an objection to the Debtors' Motion to Dismiss and at the hearing was supported in her objection by the Office of the United

States Trustee. The Chapter 7 Trustee's position is that Debtors are only entitled to dismiss their case on a showing of "cause" and that cause should not extend to a case such as this where the effect of the dismissal would deprive unsecured creditors of a dividend estimated at $8,000.00 or more. This dividend will be paid without the type of collection efforts a creditor would be forced to undertake in the event the Debtors dismiss and the creditors' remedy is reinstated under state law.

The Trustee recognizes the economic quandary in which the Debtors find themselves in feeling a moral obligation to repay the co-signer on the note, but argues that the co-signer understood, at the time the debt was co-signed, the risk that was undertaken. In effect the Trustee argues that the interest of unsecured creditors should outweigh the personal desire of the Debtors to repay this obligation which will, after all, be discharged should the case proceed under Chapter 7. The parties were afforded the opportunity to file briefs, but no briefs have been received.

I hold that the motion is denied. The case will proceed to be administered under Chapter 7. As noted at the hearing, this Court has been very reluctant to admit the unfettered dismissal of bankruptcy cases once debtors make an election to receive the benefit of the automatic stay or other benefits available to them under the Bankruptcy Code. This is particularly true when the case has been pending for a long period of time and parties' rights and expectations have been altered in light of the filing.

In this case that factor is minimized because the Motion to Dismiss was filed approximately one month after the filing of the case, at a time when creditor attention to the Court's proceedings is very likely to be relatively intense. Nevertheless, I agree with the Trustee's contention that, in the absence of controlling precedent or persuasive authority, this Court's determination whether "cause" exists to allow the dismissal under these circumstances should be measured by the interest of creditors' test. In re Astin, 77 B.R. 537 (Bankr. W.D.Va.1987); In re Harker, 181 B.R. 326 (Bankr. E.D.Tn.1995).

Clearly in this case the only interest to be served by allowing the dismissal would be the Debtors' interest in maintaining their transportation and the uncle's interest in having his debt serviced by the Debtors instead of having his certificate of deposit liquidated by the bank. As regrettable as this result is to the three of them, the interest of creditors weighs heavily in the other direction. Debtors voluntarily filed a Chapter 7 case seeking the discharge of their debts. They anticipated reaffirming the secured debt and leaving unsecured creditors empty-handed. Because of the bank's failure to perfect the lien on this vehicle, in a properly administered Chapter 7 case, unsecured creditors will receive a significant dividend. It is clearly in the creditors' interest that the case be administered under Chapter 7 and therefore the Motion is Denied.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of April, 2000.